

**TOWN OF DAVIE  
TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Monroe D. Kiar, Town Attorney (954) 583-9770

**SUBJECT:** Resolution authorizing Mayor to execute a Settlement Agreement

**TITLE OF AGENDA ITEM:** A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR TO EXECUTE A STIPULATED SETTLEMENT AGREEMENT WITH ROBERT L. CUMMINGS AND HELEN L. CUMMINGS PERTAINING TO CASE NUMBER 99-018794 CACE (14); PROVIDING FOR AN EFFECTIVE DATE.

**REPORT IN BRIEF:** The plaintiffs, Robert L. Cummings and Helen L. Cummings, instituted a lawsuit against the Town of Davie in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida under Case Number 99-018794 CACE (14) for inverse condemnation contending the Town constructed a public sidewalk over a portion of Plaintiffs' property and in doing so, deprived the Plaintiffs of the beneficial enjoyment of the property under the sidewalk. The Town filed its answer disputing the allegations of the Plaintiffs' Complaint. The parties attended a mediation session and thereafter entered into further negotiations in an effort to bring about an amicable settlement of their differences. A Special Executive Session of the Davie Town Council pertaining to this litigation was held on April 4, 2001, at which time the Town Council authorized the Town Attorney's Office to accept the settlement proposal offered by the Plaintiffs. The terms of the Settlement Agreement are formalized in the attached Settlement Agreement which has been executed by the Plaintiffs, Robert L. Cummings and Helen L. Cummings, and which needs to be executed by the Mayor on behalf of the Town of Davie. By entering into the attached Settlement Agreement, it is anticipated the Town will avoid the expense, delay and further uncertainty of future litigation.

**PREVIOUS ACTIONS:** The Town Council previously met in a Special Executive Session on Wednesday, April 4, 2001, to discuss a proposed settlement offer received on March 16, 2001 and the possible resolution of the instant litigation. After the closed session, the Council voted to accept the terms of the settlement proposal as now outlined in the attached Settlement Agreement.

**CONCURRENCES:** N/A

**FISCAL IMPACT:** No

**HAS REQUESTED BEEN BUDGETED:** If no, amount needed: \$52,000.00

**RECOMMENDATIONS:** Motion to Approve Resolution

**ATTACHMENTS:** Resolution, Settlement Agreement.

## RESOLUTION

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR TO EXECUTE A STIPULATED SETTLEMENT AGREEMENT WITH ROBERT L. CUMMINGS AND HELEN L. CUMMINGS PERTAINING TO CASE NUMBER 99-018794 CACE (14); PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Robert L. Cummings and Helen L. Cummings instituted a lawsuit against the Town of Davie for inverse condemnation contending the Town constructed a public sidewalk over a portion of Plaintiff's property and thereby deprived the Plaintiffs of the beneficial enjoyment of the property under the sidewalk; and

WHEREAS, the Town had disputed the allegations of the Complaint filed by the Plaintiffs; and

WHEREAS, the parties to this lawsuit attended a mediation session and entered into settlement negotiations in an effort to amicably resolve their differences; and

WHEREAS, a Special Executive Session of the Davie Town Council was held on April 4, 2001 which the merits of the settlement proposals submitted by the Plaintiffs were reviewed; and

WHEREAS, the Town has come to an agreement of terms with the Plaintiffs as formalized in the attached Settlement Agreement; and

WHEREAS, the Town wishes to enter into the attached Settlement Agreement, which will result in an amicable resolution of the parties' differences and will avoid the expense, delay and uncertainty of further litigation.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Mayor is hereby authorized to execute the Settlement Agreement attached as Exhibit "1" hereto, on behalf of the Town Council of the Town of Davie, Florida.

SECTION 2. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2001.

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2001.

IN THE CIRCUIT COURT OF THE  
17<sup>TH</sup> JUDICIAL CIRCUIT, IN AND  
FOR BROWARD COUNTY, FLORIDA

CASE NO. 99-018794 CACE (14)

ROBERT L. CUMMINGS and  
HELEN L. CUMMINGS,

Plaintiffs,

vs.

TOWN OF DAVIE, FLORIDA, a  
municipal corporation,

Defendant.

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**Settlement Agreement**

Plaintiffs, Robert L. Cummings and Helen L. Cummings, and Defendant, Town of Davie, Florida, have reached the following conditional Settlement Agreement:

1. In settlement of this matter the Town of Davie will pay:
  - A. Robert L. Cummings and Helen L. Cummings the sum of \$32,000 in full settlement of Plaintiffs' claims for full compensation from Defendant for a taking of a portion of Lot 1 of CCC Ranches plat, excluding Plaintiff's attorneys' fees, expert fees and costs.
  - B. Plaintiffs' law firm, Brigham, Moore LLP, the sum of \$15,000 for Plaintiffs' attorneys' fees and costs.
  - C. Reimburse Plaintiffs for any expert fees incurred by them which relate to

Plaintiffs' applications for variances (which are discussed hereafter in this Agreement), with said costs not to exceed \$5,000.

- D. Defendant will reimburse Plaintiffs for the costs associated with the preparation of the legal description of the area to be conveyed by Plaintiffs to Defendant, and a legal description of Plaintiffs' remaining portion of Lot 1.
- 2. Plaintiffs will convey to Town of Davie by Quit Claim Deed the area of the real property west from the easterly boundary of the sidewalk of Lot 1. The Plaintiffs warrant that they are the title owners of said property (except for any claims by the Town of Davie) and that there are no liens, mortgages or encumbrances on that portion of the property conveyed.
- 3. Because the Plaintiffs need to have the assurance that Lot 1 can be developed as a single family residence, and because there must be a variance(s) for this assurance to occur, and because this variance(s) cannot be granted in an Agreement, but must go through the variance process and meet the criteria of a variance, it is agreed that:
  - A. Within two (2) months of the execution of this settlement agreement, Plaintiffs will apply for all reasonable variances necessary for a single family residential development of Lot 1 from the Town of Davie for a variance which will be for variance lot size, and may be for lot width,

building pad size, and setbacks and other variances in order to accomplish the ability of Lot 1 to be utilized for development of a single family residence. There shall not be any administrative cost or filing fees for the variance process to Plaintiffs (there shall not be any expense or costs or fees charged by the Town of Davie to Plaintiffs for the variance process).


- B. The Town of Davie will make a determination regarding Plaintiffs' variance application within three (3) months of the Plaintiffs' filing for the variances.
- C. If the Town of Davie grants Plaintiffs' variance applications, then the variances will be incorporated by reference into a Final Judgment, and the Final Judgment will provide that the variances are permanent to the remainder of Lot 1 of the CCC Ranches Plat (that is Lot 1, less the portion given to the Town of Davie under this Settlement Agreement). In addition, the Final Judgment will provide that the property will be permitted, in perpetuity, to be developed with a single family residence. This obligation will run with the land and will be binding upon the Town of Davie, regardless as to when the property is ultimately developed or as to who ultimately develops the property.
- D. If the Town of Davie grants Plaintiffs' variance applications, counsel for Plaintiffs and Defendant will jointly submit to the Court for signature a

mutually approved Stipulated Final Judgment in this matter as soon as practical after the approval.

- E. If Plaintiffs are not granted all necessary variances for the development of Lot 1 as a single family residence within three (3) months after Plaintiffs' variance applications, this settlement agreement shall be voidable by Plaintiffs, but not by Defendant. In order to void the settlement agreement, Plaintiffs must give Defendant's counsel written notice of its election to void the settlement agreement within thirty (30) days after Davie's denial of Plaintiffs' variance applications.
4. Within thirty (30) days of the entry of a Stipulated Final Judgment, Defendant will pay to Plaintiffs the sums indicated in paragraph 1 above, and within said time period, the Plaintiffs' will convey to Defendant title to the portion of Lot 1 as indicated in paragraph 2 of this Agreement.
5. This settlement agreement is subject to Plaintiffs' approval of the language of the final judgment (which approval must be reasonable, and the language of the Final Judgment must be consistent with this Settlement Agreement, without adding terms and/or conditions).
6. Because of the time period necessary as a result of the unavoidable condition concerning the variance, the parties agree that, through their respective attorneys, that they will request that the Court continue this matter until there has been an

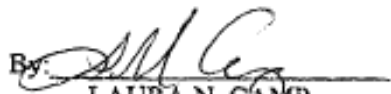
opportunity for this matter to go through the variance process.

  
Robert L. Cummings

  
Helen L. Cummings

Town of Davie  
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By:   
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Dated: 10/19/01

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By: \_\_\_\_\_  
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Florida Bar No: 177320  
Dated: \_\_\_\_\_